IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.20498 OF 2003
AND CRIMINAL ORIGINAL PETITION NOS. 20499 TO 20504 OF 2003
AND CRL.M.P.Nos.5794 TO 5807 OF 2003.

S.Mohan .. Petitioner in all CrlOPs.

-Vs-

State, by
The Inspector of Police,
Economic Offences Wing-II,
Villupuram. .. Respondent in all CrlOPs.

Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure for the reliefs as stated therein.

For petitioner : Mr.C.Prakasam

For respondent : Mr.A.N.Thambidurai,
Govt.Advocate (crl.side)

:COMMON ORDER

The petitioner, who is admittedly one of the Directors of a Benefit Fund viz. Vizhima Nagar Benefit Fund Private Limited from 26.7.1999 has come forward to file all the above criminal original petitions praying to call for the records in C.C.Nos.5 to 11 of 2002 on the file of the Court of Additional District Judge-cum-Chief Judicial Magistrate, Villupuram and quash the same on averments such as that he resigned from the Board of Directors of the said Benefit Fund from 7.1.1999 on Form-32 being issued relieving him from the said responsibility as per the Companies Act, 1956; that the defacto-complainants connected to all the above criminal original petitions are the depositors who have respectively lodged the complaints alleging that they deposited the amounts and in spite of their deposits having matured, their amounts were not repaid and the said complaints have been registered for the commission of offences punishable under Sections 120-B,420,409 etc. further pleading that his name was not figuring in the complaint; that there was no mens rea for indulging in the criminal act and hence the charges levelled against him are liable to be quashed.

2. The petitioner also would cite an order passed by this Court in Crl.O.P.No.10193 of 2000 wherein the complaint has been quashed on

ground that no mens rea was attributed against the accused persons therein and would pray to allow all the above criminal original petitions and quash the criminal proceedings pending against him.

3. During arguments, the learned counsel appearing on behalf of the petitioner besides laying emphasis on the facts pleaded in the above criminal original petition , as extracted supra, would lay emphasis on the order mentioned therein, passed in Crl.O.P.No.10193 of 2000 dated 7.7.2000 wherein the learned Judge traced the facts showing that the petitioner, a lady, therein was not paid the entire amount due in a chit fund in which she became a member of the chit and later became the prize winner and still there was a due; that the defactocomplainant executed a promissory note and on the complaint of the defacto-complainant therein, the case was registered and investigated into, in which, on a criminal original petition having been filed by the accused therein, accepting the argument of the accused therein to the effect that it was settled law that in a criminal case, there must be presence of guilty mind i.e. mens rea, which is an essential element of a crime and since it was lacking in the case and since the defacto-complainant therein had also filed a suit for recovery of the said sum, the learned Judge had allowed the petition filed by the accused quashing the said proceeding.

4. Since the learned counsel appearing on behalf of the petitioner in the cases in hand is entirely depending on the order passed in the said case, cited supra, it has become incumbent on the part of this Court to go into the aspect `whether the norms based on which the said decision was arrived at by a learned single Judge of this Court could be applied to the case in hand'?

5. While considering the said aspect, it must be stated firstly that the facts are entirely different since majority of the amount had been paid in favour of the complainant therein and only a paltry sum remain unpaid regarding which also, the complainant therein has filed a civil suit for the recovery of the said sum as per the terms and conditions entered into in between the defacto-complainant and the accused company. But, it is not the same facts and circumstances that are prevalent in the case in hand and they are entirely different. Secondly, regarding the question whether mens rea i.e. the guilty mind to cheat the defacto-complainant is present is concerned, it could only be arrived at on facts and circumstances encircling each and every case and the evidence gathered from various sources during trial and therefore it is a subject that has to be dealt with in application of the entire evidence collected in the given case by the trial Court and it is not for this Court to bluntly arrive at the conclusion that mens rea is not there without having any materials placed on record for the absence of mens rea on the part of the company and its Directors and hence this Court is of the firm view that no decision could be arrived at regarding the presence of mens rea for the accused and therefore the only valid conclusion that could be arrived at in the circumstances of the above cases is that the trial is the answer for all the grounds pleaded and therefore no hasty conclusion could be arrived at applying the norms of the said case cited and it is only proper to permit the trial Court to go ahead with the trial in the manner provided by law without causing any unnecessary and unwarranted obstruction or hindrance

for the trial proceeding by the lower Court and hence the following order:
In result,
(i)all the above criminal original petitions are devoid of merits and they are dismissed accordingly.
(ii)The Court of Additional District Judge-cum-Chief Judicial Magistrate, Villupuram is hereby directed to conduct a full trial into the facts and circumstances of all the cases in hand in the manner required by law, so as to deliver a judgment on merits and in accordance with law as expeditiously as possible.

Consequently, Crl.M.P.Nos.5794 to 5807 of 2003 are also dismissed.

Index: Yes
Internet: Yes

Rao

To

1.The Inspector of Police,
Economic Offences Wing-II,
Villupuram.

2.The Additional District Judge-cum-
Chief Judicial Magistrate,
Villupuram.

3.The Public Prosecutor,
High Court, Madras.